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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/568,725  | 12/13/2006  | Philippe Saulnier    | 026032-4981         | 7152             |
| 23428 7590 02/11/2009<br>FOLEY AND LARDNER LLP<br>SUITE 500<br>3000 K STREET NW<br>WASHINGTON, DC 20007 |             |                      |                     |                  |
| EXAMINER  |             |                      |                     |                  |
| CHANG, VICTOR S   |             |                      |                     |                  |
| ART UNIT  |             | PAPER NUMBER         |                     |                  |
| 1794  |             |                      |                     |                  |
| MAIL DATE   |             | DELIVERY MODE        |                     |                  |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/568,725

**Applicant(s)**

SAULNIER, PHILIPPE

**Examiner**

VICTOR S. CHANG

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 20-22 and 25-45 is/are pending in the application.
- 4a) Of the above claim(s) 26-29, 31-39 and 41-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-22, 25, 30 and 40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Introduction***

1. Applicants' amendments and remarks filed on 1/14/2009 have been entered. Claims 20, 21, 25, 27, 30 and 40 have been amended. Claims 1-19, 23 and 24 have been cancelled. Claims 20-22, 25, 30 and 40 are active.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. In response to the amendments, the grounds of rejection have been updated as set forth below. Rejections not maintained are withdrawn.

### ***Rejections Based on Prior Art***

4. Claims 20-22, 25, 30 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cobbledick [US 3586649] in view of McGregnor [US 3258511].

Cobbledick's invention relates to polyurethane foam. Polyurethane foam is useful as a pad for the seat of an upholstered chair [col. 1, ll. 67-68; col. 14, ll. 30-31]. The foam has open and/or closed cell [col. 1, ll. 52-53; col. 13, ll. 50]. Shaped foam structure is provided with a tough outer protective skin (protective layer). The skin can be formed by spraying or coating with a suitable film forming composition on the foam, or by covering the interior surface of a mold prior to forming the polyurethane foam [col. 2, ll. 2-15]. Useful skin include vinyl plastic sheet formed from plastisol [col. 2, ll. 17].

For claims 20 and 22, Cobbledick is silent that the vinyl plastic is polyvinyl acetate. However, McGreggor's invention relates to polyurethane foam for upholstering furniture [col. 1, ll. 16-18]. An impervious film is provided over the porous surface of the foam [col. 1, ll. 69-72]. Useful films include homopolymer of vinyl acetate [col. 2, ll. 58-63]. It would have been obvious to one of ordinary skill in the art to use polyvinyl acetate as the vinyl plastic in Cobbledick's foam for upholstering, because the selection of a known material based on its suitability for its intended use supported a *prima facie* obviousness determination. See MPEP § 2144.07. It should be noted that vinyl plastic sheet is necessarily a cured plastisol, which is a liquid prior to curing, and vinyl plastic is inherently formed by radical polymerization.

For claim 21, since statements of intended use do not serve to distinguish structure over the prior art, the use language relating to the arrangement of the foam in use has not been has not been given any patentable weight.

For claim 25, since the process limitation has not been shown on the record to produce a patentably distinct article, the formed articles are rendered *prima facie* obvious, and this limitation at the present time has not been given patentable weight.

For claim 30, since Cobbledick teaches the same structure/composition for the same use as the claimed invention, a workable skin thickness is deemed to be an obvious routine optimization to one of ordinary skill in the art, motivated by the desire to obtain required properties for the same end use as the claimed invention.

For claim 40, since it is within the same scope of claims set forth above, it is also rejected for the same reasons.

***Response to Amendment***

5. Applicant argues at Remarks page 6

“Cobbledick does not identically disclose an “upholstery part” comprising, among other elements, “wherein the protective layer contains polyvinyl acetate that can be applied in liquid form and cured” as recited in independent Claim 20.”

However, in response to amended claim 20, the grounds of rejections have been amended as set forth above. Applicant’s argument is moot over Cobbledick in view of McGregor.

Applicant argues at page 8

“The suggestion to make the combination of Cobbledick and McGregor has been taken from the Applicant's own specification (using hindsight), which is improper.”

However, it would have been obvious to one of ordinary skill in the art to use polyvinyl acetate taught by McGregor as the vinyl plastic in Cobbledick’s foam for upholstering, because the selection of a known material based on its suitability for its intended use supported a prima facie obviousness determination. It must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. Since the present Office action takes into account only knowledge which was within the level of ordinary skill at the time the invention was made, and does not include knowledge gleaned only from the applicant’s disclosure, such a reconstruction is proper. *In re McLaughlin*, 443 F.2d 1392; 170 USPQ 209 (CCPA 1971).

***Conclusion***

6. Applicant’s amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VICTOR S. CHANG whose telephone number is (571)272-1474. The examiner can normally be reached on 7:00 am - 5:00 pm, Tuesday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Victor S Chang/  
Primary Examiner, Art Unit 1794